

1 THE HONORABLE JOHN C. COUGHENOUR  
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7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
9 AT SEATTLE

10 VIRGIL ARMSTRONG,

11 Plaintiff,

v.

12 DEPUTY C. WHALEN *et al.*,

13 Defendant.

CASE NO. C18-0845-JCC

ORDER

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15 This matter comes before the Court on Defendants' motion to stay proceedings pending  
16 appeal (Dkt. No. 67). On June 5, 2020, the Court denied Defendants' motion for summary  
17 judgment, concluding that Defendants Carl Whalen, Kore Oyetuga, Chad Daugherty, and Ty  
18 Trenary were not entitled to qualified immunity. (Dkt. No. 61 at 6–11.) On June 29, 2020,  
19 Defendants appealed the Court's decision to the Ninth Circuit. (Dkt. No. 64.) Defendants now  
20 move to stay the proceedings before the Court pending the appeal. (Dkt. No. 67.)

21 If a district court denies qualified immunity based on an issue of law, the denial is  
22 appealable as a "final decision" within the meaning of 28 U.S.C. § 1291. *Mitchell v. Forsyth*, 472  
23 U.S. 511, 530 (1985). So long as the appeal is not frivolous, the appeal automatically divests the  
24 district court of jurisdiction "over the particular issues involved in [the] appeal." *City of Los*  
25 *Angeles v. Santa Monica Baykeeper*, 254 F.3d 882, 886 (9th Cir. 2001); *Chauman v. Wright*, 960  
26 F.2d 104, 104–05 (9th Cir. 1992) ("[A] frivolous or forfeited appeal does not automatically

1 divest the district court of jurisdiction.”). The appeal does not, however, divest the district court  
 2 of jurisdiction over the “aspects of the case that are not subject of the appeal.” *United States v.*  
 3 *Pitner*, 307 F.3d 1178, 1183 n.5 (9th Cir. 2002). In deciding whether to stay those aspects of the  
 4 proceedings, the district court must consider “the possible damage which may result from the  
 5 granting of a stay, the hardship or inequity which a party may suffer in being required to go  
 6 forward, and the orderly course of justice measured in terms of the simplifying or complicating  
 7 of issues, proof, and questions of law which could be expected to result from a stay.” *CMAX, Inc.*  
 8 *v. Hall*, 300 F.2d 265, 268 (9th Cir. 1962).

9 Here, the Court denied qualified immunity to Defendants Whalen, Oyetuga, Daugherty,  
 10 and Trenary based the Court’s legal conclusion that the Defendants violated Plaintiff’s clearly  
 11 established Fourth Amendment rights when the evidence was viewed in the light most favorable  
 12 to Plaintiff. (See Dkt. No. 61 at 6–11.) In addition, Defendants have filed a non-frivolous appeal  
 13 of the Court’s decision. (Dkt. No. 64.) The Court is, therefore, divested of jurisdiction over the  
 14 issues involved in the appeal. See *City of Los Angeles*, 254 F.3d at 886. Furthermore, Plaintiff  
 15 has failed to oppose Defendants’ motion for a stay, which the Court construes as an admission  
 16 that the motion has merit. See W.D. Wash. Local Civ. R. 7(b)(2). The Court also finds that a stay  
 17 would be in the interest of judicial economy. Accordingly, the Court hereby STAYS all further  
 18 proceedings in this case until the Ninth Circuit resolves Defendants’ appeal.

19 DATED this 31st day of August 2020.

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John C. Coughenour  
UNITED STATES DISTRICT JUDGE